IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Misc.No.15629-M of 1993
Date of decision : 29.3.2007

Ravi Kumar Gupta

..... Petitioner

Vs.

M/s Narinder Kumar & Co.

....Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

.....

Present : Mr. D.S.Patwalia, Advocate
for the petitioner.

Mr. Ashok Singal, Advocate
for the respondent.

...

MAHESH GROVER.J.

The petitioner has invoked the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with a prayer to quash the complaint dated 26.3.1993 (Annexure P.1) filed by the respondent under the provisions of Sections 406, 420, 465, 467 and 471 of the Indian Penal Code as also to quash the order dated 20.8.1993 (Annexure P.2) by which the petitioner has been summoned under the provisions of Section 420 of the Indian Penal Code.

The petition has been filed by M/s Sathyam Roller Flour Mills (P) Ltd., P.O. Parassinikadavli, Kannur (Kerala) through its

Managing Director with the aforesaid prayer.

The respondent, which is a partnership firm dealing in the business of commission agents handling food grains for import and export within the State of Punjab as also throughout the country, filed a complaint Annexure P.1 with the allegations that the petitioner had purchased 510 bags of wheat at the rate of Rs.390/- per quintal from the complainant through the agency of a canvassing agent M/s S.V.K.Brothers, Madras vide Bill No.95 dated 28.9.1992. The total amount of the transaction was Rs.1,91,176/-. The bargain was to make the payment conditionally through bank and the respondent had accordingly sent RRs through the bank for Rs.95,588.00 each through Punjab National Bank, Bathinda to Canara Bank at Cannore, Kerala. The petitioner paid one of the Hundis and it was alleged that he dishonestly and fraudulently did not honour the Hundi with ulterior motive to deprive the complainant of the payment of Rs.95,588.00. The said transaction had been executed in this manner on the representation made by M/s S.V.K.Brothers, the canvassing agent.

It was further alleged in the complaint that the petitioner had misrepresented that he was unable to pay the Hundi amount and demanded free RRs or indemnity bond of the railways. The indemnity bond was accordingly issued by the respondent, but despite that, the payment was not made except for a partial payment of Rs.31,770/- made vide demand draft No.387911 drawn on the State Bank of India, which was duly received by the complainant.

Broadly, on the aforesaid allegations the complaint was filed and the petitioner was summoned subsequent thereto vide orders

dated 20.8.1993 (Annexure P.2) on record.

The petitioner has assailed the aforesaid order to contend that a perusal of the complaint did not disclose the commission of any offence as the transaction had concededly taken place, even though the petitioner was reluctant to enter into such a transaction with the respondent which is borne out from Annexures P.3 to P.9. Having regard to this, it cannot be said that there was any overt act of inducement so as to satisfy the ingredients of Section 420 of the Indian Penal Code. That being so, no offence could have been said to have been committed by the petitioner. Reliance was placed on **S.N.Palanitkar and others v. State of Bihar and another**, AIR 2001 Supreme Court 2960. Besides, even if the entire complaint is taken to be correct, it could at best reveal a civil liability suffered during the course of the business. That apart, the complaint has been filed without alleging that Mr. M.L.Gupta, Managing Director was responsible for the affairs of the company which is the pre-requisite for maintainability of a complaint. The last contention raised by the learned counsel for the petitioner was that the Court before whom the complaint had been filed lacked jurisdiction as the entire transaction had been completed in Madras. That being so, the Court at Bathinda could not have taken cognizance of the same.

On the other hand, the aforesaid contentions were sought to be refuted by the learned counsel appearing for the respondent who contended that the complaint and the consequent summoning order were perfectly justifiable as the petitioner had defaulted in making the payment and had misrepresented through the canvassing agency

which led the complainant to supply him goods in the mode and manner suggested by him and the breach thereof would amount to the commission of an offence under Section 420 of the Indian Penal Code.

I have heard the learned counsel for the parties at length.

Section 420 of the Indian Penal Code reads as follows :

> "**420. Cheating and dishonestly inducing delivery of property**.-- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Clearly, to constitute the commission of the offence the basic ingredients of dishonestly inducing the delivery of a property has to be satisfied. The most essential ingredient therefore is the mens-rea in the absence of which the allegations of cheating cannot be sustained. Mere delivery of property pursuant to some business transaction in the absence of the intention to dishonestly induce such a delivery would not attract the provisions of Section 420 of the Indian Penal Code.

Concededly, in this case there was a reluctant business transaction on the part of the petitioner, which for some reason resulted in breach of its conditions resulting in deprivation of some

amount to the complainant. This itself is not sufficient to constitute the commission of an offence under section 420 of the Indian Penal Code. The intention to deceive has to be manifest from the conduct of the parties. The Hon'ble Supreme Court in **S.N.Palanitkar's case** (supra) has observed as under:

> "...In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

Clearly, pursuant to the transaction goods had been received by the petitioner and some payment made. The complainant had the remedy under the civil law to take necessary steps in order to recover the amount by establishing the liability. But by no stretch of imagination can it be said that the offence under Section 420 of the Indian Penal Code would be attracted.

Since the complaint prima facie does not disclose the commission of any offence, hence persisting with it and the proceedings pursuant thereto would completely be an abuse of the process of law. The Hon'ble Supreme Court in **Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others,** AIR 1976 SC 1947 has observed as under :

> " It is true that in coming to a decision as to whether

a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court or even the Supreme Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry under Section 202 which culminates into an order under Section 204. Thus in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction or absence of a complaint by legally competent authority and the like."

The case of the petitioner squarely falls in the first category of the principles as enunciated by the apex court. A perusal of the complaint does not reveal the commission of any offence.

The aforesaid principles have been broadly reiterated by the apex court in **State of Haryana and others v. Ch. Bhajan Lal and others**, AIR 1992 SC 604.

For the reasons stated above, the present complaint and the consequent summoning order are hereby quashed.

Petition allowed.

29.3.2007 (MAHESH GROVER)
JUDGE

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